

GOVERNMENT OF WALES ACT 2006

EXPLANATORY NOTES

DETAILED COMMENTARY ON SECTIONS IN PART 6

Miscellaneous

Section 149: Resolution of devolution issue

529. This section gives effect to Schedule 9, which makes detailed provision about the resolution of devolution issues.

Section 150: Power to make consequential provision

530. This section enables the UK Government to make subordinate legislation to deal with the consequences of provision made by or under ‘Welsh legislation’.
531. The section enables the Secretary of State by order, to make provision which he considers appropriate in consequence of any provision made by or under an Assembly Measure or Act, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made, confirmed or approved) by the Welsh Ministers, the First Minister or the Counsel General, or any provision of subordinate legislation made, confirmed or approved (or purporting to be made, confirmed or approved) by a person other than a Minister of the Crown under an Act of Parliament where the statutory instrument is required to be laid before the Assembly.
532. An order under this section can make provision having retrospective effect and may modify any enactment, prerogative instrument or other instrument or document as is considered appropriate by the Secretary of State. Orders under this section are subject to negative procedure in Parliament (i.e. they can be annulled after being made by a resolution of either House of Parliament) unless they modify an Act, in which case they are subject to affirmative procedure (i.e. they cannot be made unless they have first been laid before and approved in draft by a resolution of both Houses of Parliament).

Section 151: Power to remedy ultra vires acts

533. This section enables Her Majesty by Order in Council to make provision in consequence of an Assembly Measure or Act or an exercise by any person of a function imposed or conferred by Assembly Measure or Act which is, or is suspected to be, outside the competence of the Assembly or person. Such provision could be given retrospective effect to enable third parties to be put in the position they thought they were in before a defect was discovered.
534. An Order in Council under this section can make any modifications as Her Majesty considers appropriate to remedy any enactment (including an Act of the Scottish Parliament or an instrument made under such an Act), prerogative instrument or other instrument or document. However, where the proposed modifications are amendments to or repeals of Acts, a draft statutory instrument has to be approved by a resolution of both Houses of Parliament before a recommendation can be made to Her Majesty to make the Order in Council.

535. In circumstances where the Secretary of State has used his power in section 150 to make modifications of enactments, instruments or documents (see the note to that section), in consequence of an Assembly Measure, an Act of the Assembly or subordinate legislation made under such Measure or Act, but it is subsequently considered that the Measure or Act in question (including the Act or Measure under which the subordinate legislation was made) was outside the Assembly's legislative competence, the power in section 151 may be used by Her Majesty to reverse or modify any consequential modifications made in exercise of the power under section 150. Such reversal or modification of the modifications may be considered appropriate in consequence of the Measure or Act which is considered to be beyond competence.

Section 152: Intervention in case of functions relating to water etc.

536. This section allows the Secretary of State to intervene where the exercise of (or failure to exercise) devolved functions by the First Minister, the Welsh Ministers or the Counsel General, or by anyone else upon whom such functions have been conferred by an Assembly Measure or Act, might have a serious adverse impact on water resources, supply or quality in England. The intervention is to take the form of a notice to the person(s) on whom such functions are conferred. The Environment Agency and any water or sewerage undertaker concerned in the case must also be notified that the Secretary of State is intervening. The effect of the notice is to allow that the Secretary of State to exercise the relevant function instead of the person(s) on whom it is conferred. The notice must explain why the Secretary of State is intervening. It can also make provision about the effect of actions previously taken by the person(s) on whom the function is conferred, and extend the time for the taking of steps in relation to that function by the Secretary of State, or any other person.

Section 153: Power to vary retrospective decisions

537. This section provides for a court or tribunal to remove, or limit any retrospective effect, or suspend any such effect, of a decision by it that an Assembly Measure or Act or a provision of it is outside the Assembly's competence, or that a provision of subordinate legislation made (or purported to be made) under an Assembly Measure or Act of the Assembly, or by the Welsh Ministers, the First Minister or the Counsel General is outside the power to make that subordinate legislation..
538. The section also provides that one of the criteria the court or tribunal must take into account when determining whether to use this power is the extent to which third parties would otherwise be adversely affected.
539. The section also provides that if a court or tribunal is considering using this power it must in certain circumstances give notice of that fact to the Attorney General and the Counsel General in relation to proceedings in England and Wales, to the Advocate General for Scotland in relation to proceedings in Scotland and to the Advocate General for Northern Ireland in relation to proceedings in Northern Ireland. The appropriate person may then become a party to the proceedings so far as they relate to the making of the order. The section enables the court or tribunal to take into account and award the whole or part of the additional expense incurred as a result of the participation of an appropriate person to the person who incurred them.
540. Provision for court procedures applying for the purposes of this section can be made under any power to make provision for regulating procedure before any court and tribunal. Such provision would include, for example, how to determine the time within which any notice is to be given.

Section 154: Interpretation of legislation

541. This section makes provision for the interpretation of a proposed Assembly Measure, an Assembly Measure, an Act or Bill of the Assembly, and of subordinate legislation made, confirmed or approved or purporting to be made, confirmed or approved under

an Assembly Measure or Act of the Assembly. The purpose of the section is to enable the courts to give effect to such legislation, wherever possible, rather than to invalidate it merely because it could be read in such a way as to be outside the competence or powers under which it was made.

542. It provides that, in such case, the legislation is to be read as narrowly as is required for it to be considered to be within competence or powers (if such a reading is possible) and is to have effect according to that narrow reading.

Section 155: Functions exercisable in relation to Wales

543. This section allows Her Majesty to make Orders in Council specifying functions which are, or are not, for such purposes as the Order may specify:
- a) exercisable by the First Minister, the Welsh Ministers or the Counsel General; or
 - b) exercisable in relation to Wales.
544. Orders under this section are subject to negative procedure in Parliament, (i.e. they can be annulled after being made by a resolution of either House of Parliament).

Section 156: English and Welsh texts of legislation

545. This section confers equal validity on the English and Welsh texts of legislation (including Assembly Acts and Measures, and subordinate legislation) made bilingually.
546. It also contains a provision allowing the Welsh Ministers to provide by order (subject to the prior approval of the Assembly by formal resolution) that particular Welsh words and phrases in Assembly Measures or Acts, or in subordinate legislation made under them or by the Welsh Ministers, are to have the same meaning as the English words and phrases specified in relation to them in the order. The purpose of this provision is to ensure that the legislation has the same effect in both languages.

Section 157: Orders and directions

547. This section contains provision applicable to any power in the Act to make orders. It provides that the Welsh Ministers' and a Minister of the Crown's powers under the Act to make orders are to be exercisable by statutory instrument. It also provides that any power under the Act to give a direction includes a power to vary or revoke the direction.

Section 158: Interpretation

548. This section defines terms used in the Act.

Section 159: Index of defined expressions

549. This section contains a list of expressions which are defined or explained in the Act and notes the provisions where such definitions or explanations are to be found.

Section 160: Minor and consequential amendments

550. This section introduces Schedule 10 which contains minor and consequential amendments to other legislation that follow from the provisions of this Act. It enables the Secretary of State by order to make further amendments, in consequence of this Act, to legislation which was made before, or was made in the same Parliamentary session as, this Act.
551. The section also provides for a mechanism that ensures that the Secretary of State cannot make an order making consequential amendments to another Act, unless the order has been approved by both Houses of Parliament. The mechanism is that the Secretary of State must lay a draft of the order before both Houses of Parliament, and cannot make the order until both Houses have made a resolution approving the draft order. If the

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(c.32) which received Royal Assent on 25 July 2006*

order does not contain amendments to Acts, a resolution of either House of Parliament can annul that order after it has been made.

Section 161: Commencement

552. This section provides that, subject to the following exceptions, the provisions of this Act come into force immediately after the Assembly ordinary election in 2007. The exceptions are as follows.
553. Provisions which come into force on the date of Royal Assent:

<i>Section</i>	<i>Effect</i>
Schedule 2, paras 5, 6 and 12	Para 5 allows the Assembly Commission to promote awareness of the Assembly election system, and of the current or any pending system of devolved government in Wales.
	Para 6 allows the Assembly Commission to provide financial assistance to the Electoral Commission to promote awareness of the Assembly election system and the system of devolved government in Wales.
	Para 12 allows Her Majesty to make an Order in Council providing for the Assembly Commission to be treated to any extent as a Crown body for the purposes of any enactment.
Sections 95 and 96, and Schedule 5	Section 95 allows Her Majesty to amend Schedule 5 by Order in Council. Schedule 5 contains the matters in relation to which the Assembly may pass Assembly Measures, together with general restrictions on such legislative competence and exceptions from those restrictions.
	Section 96 permits the Counsel General or the Attorney General to refer a proposed Order under section 95 to the Supreme Court to decide whether any matter that the proposed Order would add to Part 1 of Schedule 5 relates to a field listed in that Part.
Section 109 and Schedule 7	Section 109 allows Her Majesty to amend Schedule 7 by Order in Council. Schedule 7 contains the subjects (including exceptions from those subjects) in relation to which the Assembly would be able to pass Acts of the Assembly if the majority of voters in a referendum voted for the Assembly to have such powers. The Schedule also contains general restrictions on such legislative competence and exceptions from those restrictions.
Section 119, and repeal by Schedule 12 of section 81 of GoWA	Requirement for the Secretary of State to make a written estimate to the Assembly of payments to be made into the Welsh Consolidated Fund, and to the Welsh Ministers, First Minister and Counsel General, at least four months before the beginning of the financial year.
	The purpose of commencing this provision on the date of Royal Assent is to allow the Secretary of State to produce written estimates of payments in sufficient time to enable the “old” Assembly established under GoWA to set the budget for financial year 2007-08.
	Repeal of antecedent provision under s.81 GoWA.
Section 120 (3) and (7)	Provision allowing the Treasury to designate by order that, in respect of certain sums received by or on behalf of the Welsh Ministers and others (e.g. the Auditor General) the Welsh Ministers

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<i>Section</i>	<i>Effect</i>
	are required to pay an equivalent sum into the UK Consolidated Fund, via the Secretary of State.
Section 125 and repeal by Schedule 12 of section 86 of GoWA	Requirement for an annual Budget motion, and repeal of provision requiring Assembly constituted under GoWA to make an annual statement of proposed expenditure. The provisions in Section 125 are commenced from Royal Assent to enable the “old” Assembly constituted under GoWA to set an annual Budget for financial year 2007-'08.
Sections 157 to 159	General provisions about orders and directions; interpretation; and index of defined expressions.
Section 160 (2) to (4)	Power for the Secretary of State to make consequential amendments to other enactments.
The amendment made to section 13 of the Political Parties, Elections and Referendums Act 2000 (PPERA), by paragraph 61 of Schedule 10	Provision in relation to financial assistance which may be provided by the Assembly Commission to the Electoral Commission under paragraph 6 of Schedule 2 to this Act.
This section	Provides for when the provisions of this Act come into force.
Section 162 and Schedule 11	Transitional provisions, transitory provisions and savings, together with power for the Secretary of State to make other such provisions.
Repeal by Schedule 12 of s.12(1)(d) GoWA	Repeal of provision disqualifying from Assembly membership anyone who has been disqualified from being a local authority member under ss. 17(2)(b) or 18(7) of the Audit Commission Act 1998. Those sections are now spent.
Sections 164 to 166	Extent, Financial Provision and short title.

554. Provisions which come into force on 1st April 2007:

Sections 117 and 118, and repeal by Schedule 12 of s.80 GoWA	Establishing the Welsh Consolidated Fund, and requiring the Secretary of State to make payments into it from time to time.
	Repeal of antecedent provision under s.80 GoWA.
Section 120(1) and (2), (4) to (6) and (8) and the repeal by Schedule 12 of section 84 of GoWA	Provisions relating to payments into, and payments chargeable on, the Welsh Consolidated Fund.
Sections 121 and 122, and repeal by	Provisions allowing the Welsh Ministers to borrow money from the Secretary of State.
	Repeal of antecedent provision under s.82 GoWA.

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Schedule 12 of s.82 GoWA	
Section 124, and repeal by Schedule 12 of ss. 85(1) and 89 GoWA	Provisions specifying when payments can be made out of the Welsh Consolidated Fund. Repeal of antecedent provision under s.85(1) and 89 GoWA.
Section 126	Section 126 allows one or more supplementary Budget motions to be moved in any financial year.
Sections 128 and 129	Section 128 permits payments to be made out of the Welsh Consolidated Fund without a budget resolution in an emergency situation. Section 129 requires approval to draw from the Auditor General for Wales before any payment can be made out of the Welsh Consolidated Fund.
Schedule 10	The amendments made to the Local Government, Planning and Land Act 1980, the Local Government Finance Act 1988 and the Housing Act 1988, consequential upon the creation of the Welsh Consolidated Fund.

555. Provisions which come into force immediately after the day on which the first First Minister is appointed under section 46, unless they were brought into force on Royal Assent or on 1st April 2007 as set out above, and subject to section 161 (6), which makes provision as to when certain repeals of GoWA will come into force
- a) Any provision so far as it relates to functions of the First Minister, the Welsh Ministers, the Counsel General or the Assembly Commission,
 - b) Any provision so far as it relates to the Auditor General or the Comptroller and Auditor General,
 - c) Any other provision which is an amendment to GoWA 1998 made by Schedule 10 to this Act,
 - d) Repeals by Schedule 12 of provisions which fall to be repealed as a consequence of provisions which fall within sections 161 (4) (a), (b) or (c).
556. The repeal by Schedule 12 of sections 83, 88, 93(8), 97 and 101A of GoWA, and of other provisions of that Act so far as they relate to those sections, is dealt with by section 161 (6).
557. The repeals come into force when those sections (which make various provisions in relation to the preparation of accounts by the Assembly and by the Secretary of State) have been complied with for the financial year ending 31st March 2007 (and for earlier financial years), and sections 123, 131, 132 and 141 do not apply for that financial year.
558. The Assembly Act provisions and provisions relating to the holding of a referendum on those provisions, come into force as follows:
- a) The “Assembly Act provisions” are defined by section 103(8) as sections 107 and 108, and sections 110 to 115.
 - b) Sections 107 and 108 give the Assembly primary legislative powers, its legislative competence being set out in section 108 and Schedule 7. These powers are exercisable by the passing of Acts of the Assembly. Sections 110 to 115 set out related procedural provisions.
 - c) Sections 103 and 105 come into force immediately after the Welsh ordinary election in 2007. Section 103 provides for the holding of a referendum on whether the Assembly Act provisions should be brought into force. Section 105 provides

that if the majority of voters in such a referendum vote in favour of bringing the Assembly Act provisions into force, then the Welsh Ministers can bring them into force on such date as they may specify by making a commencement order. Section 104, which deals with proposals by the Assembly that a referendum should be held, comes into force on the first appointment of a First Minister under the Act .

Section 162: Transitional etc. provision

559. This section gives effect to Schedule 11, which contains transitional and transitory provisions and savings. It also confers a general power on the Secretary of State to make, by order, any other transitional, transitory or saving provision which appears appropriate, including savings from the effect of amendments, repeals or revocations of legislation made by this Act. This power is not limited by Schedule 11, and orders made under this section can modify that Schedule.
560. The provisions made in Schedule 11 and in any order under this section are subject to sections 16 and 17 of the Interpretation Act 1978 . Section 16 of that Act makes general provisions about the effect of repeals, e.g. saving the validity of anything done or any right incurred under a previous enactment prior to its repeal. Section 17 provides that where an Act repeals and re-enacts a previous enactment, unless the contrary intention appears, any reference in any other enactment to the repealed enactment shall be construed as one to the re-enacted provision. It also provides that subordinate legislation, or other things done under the repealed enactment, are to have effect as if made or done under the re-enacted provision.
561. Orders under this section are subject to negative parliamentary procedure, unless they amend or repeal any of paragraphs 30 to 35, 50 and 51 of Schedule 11 to this Act, in which case they are subject to affirmative parliamentary procedure.

Section 163: Repeals and revocations

562. This section introduces Schedule 12.

Section 165: Extent

563. The Act 's substantive provisions extend (with limited exceptions) to the whole of the United Kingdom although its practical application will be confined almost entirely to Wales. The provisions which do not extend to the whole of the United Kingdom are section 36(7) to (9), section 39 and section 40(2) and (3). These provisions create criminal offences and extend only to England and Wales. Where the Act makes consequential amendments, these have the same extent as that of the statutes amended.

Section 166: Short title

564. This section provides the title by which reference may be made to this Act in other legislation.

Schedule 1: Alteration of Assembly Electoral Regions

565. [Section 2](#) of the Act says, among other things, how the Assembly electoral regions are delineated and how many seats will be allocated to each.
566. Alterations may need to be made to those regions, and to the numbers of seats allocated to those regions, as a consequence of changes to parliamentary constituencies.
567. This Schedule deals with making alterations in such circumstances. However, until such time as the functions of the Boundary Commission for Wales are transferred to the Electoral Commission, and functions are conferred on the Boundary Committee for Wales, by the coming into force of section 16 (1) of the Political Parties, Elections and Referendums Act 2000 for those purposes, the Schedule is to have effect with the modifications set out in paragraph 1 of Schedule 11.

Paragraph 1 – Introduction

Paragraph 1(2)

568. Sub-sections 3(1) and 3(2) of the Parliamentary Constituencies Act 1986 require the Electoral Commission to keep under review the representation of England, Scotland, Wales and Northern Ireland in the House of Commons, and to make regular reports to the Secretary of State about the representation of the *whole* of each of those parts of the United Kingdom (for example, the whole of Wales).
569. Sub-section 3 (3) of the Parliamentary Constituencies Act 1986 also gives the Electoral Commission the power to report to the Secretary of State on a particular area (for example, a specific area of Wales), showing the constituencies into which it thinks the area should be divided, in order to ensure compliance with rules which are set out in Schedule 2 to the Parliamentary Constituencies Act 1986.
570. The effect of sub-section 3A (1) of the Parliamentary Constituencies Act 1986 is that where the Electoral Commission intends to consider making a report under sub-section 3(1) or sub-section 3(2) of that Act, the Boundary Committee for Wales must carry out a review.
571. The purpose of the review by the Boundary Committee for Wales is to enable it to make recommendations to the Electoral Commission about what it should put in its report to the Secretary of State.
572. Under sub-section 3A(2) of the Parliamentary Constituencies Act 1986, the Boundary Committee for Wales must put its recommendations in a report to the Electoral Commission.
573. [Paragraph 1\(2\)](#) of Schedule 1 to this Act says that Schedule 1 will apply where the Electoral Commission intends to consider making a report in respect of the whole of Wales, or a part of Wales under section 3 of the Parliamentary Constituencies Act 1986 and, therefore, the Boundary Committee for Wales is under a duty to make recommendations to the Electoral Commission about what the report should say.

Paragraph 2 - Assembly electoral region issue

Paragraphs 2(1) and 2(2)

574. [Paragraph 9](#) of this Schedule sets out rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions.
575. If the Boundary Committee for Wales has provisionally decided upon some recommendations which it is minded to put in a report to the Electoral Commission, and which would involve altering any parliamentary constituency in Wales, it must *also* consider whether there needs to be any alteration to the Assembly electoral regions, or to the allocation of seats to those regions, in order to ensure that the rules in paragraph 9 of this Schedule would still be complied with, following those alterations to parliamentary constituencies (“the Assembly electoral region issue”).

Paragraph 3 - Notice of Committee’s proposed recommendations

576. This paragraph requires the Boundary Committee to publish notice of its recommendations in each electoral region affected.

Paragraph 3(1)

577. For the purposes of this paragraph, a recommendation which “affects” an Assembly electoral region need not be a recommendation that the region should be

altered. A recommendation that a region should *not* be altered also counts as a recommendation that affects a region.

Paragraph 3(2)

578. This says what must be in the notice. The notice must:
- a) say what the effect of the Boundary Committee for Wales' proposed recommendations will be;
 - b) if the Boundary Committee *is* recommending a *change* to an electoral region, say where the public can inspect a copy of the recommendations. There must be at least one place of inspection in each constituency which falls within the electoral region;
 - c) explain that if anyone wishes to express a view about the recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(3)

579. The Boundary Committee for Wales must take into account any views which are received by it within the one month time limit.

Paragraph 3(4)

580. This says what must happen if, after the newspaper notice has been published, the Committee changes any of its recommendations in respect of an electoral region (including where it has made the change after taking into account views expressed to it following publication of the newspaper notice).
581. The Committee must publish another notice in a newspaper which is readily available in the electoral region to which the changed recommendations relate. The notice must:
- a) say what the effect of the changed recommendations would be;
 - b) if a changed recommendation would have the effect of altering an Assembly electoral region, say where the public can inspect a copy of the recommendation. There must be at least one place of inspection in each constituency which falls within the electoral region;
 - c) explain that if anyone wishes to express a view about the changed recommendations they may do so by writing to the Boundary Committee. Their letter must be received by the Committee within one month of the date of publication of the notice.

Paragraph 3(5)

582. However, where the effect of the Boundary Committee's recommendation (original or revised) is only to alter the number of regional seats for a region, and the resulting number of regional seats for all the regions would be exactly divisible by 5, the Committee does not have to publish a newspaper notice.

Paragraph 3(6)

583. However, if the Boundary Committee's proposed recommendations (original or revised) would result in the *total* number of seats for *all* the Assembly electoral regions not being exactly divisible by 5, then the recommendation will necessarily affect all the electoral regions.

584. Therefore, the Boundary Committee must publish newspaper notices which comply with paragraph 3(2) of this Schedule in all the electoral regions. The effect on each region must be stated in the notice. The Boundary Committee is under a duty to take into account any views expressed following publication of the notice.

Paragraph 4 - Local inquiries

585. This paragraph enables the Boundary Committee to hold a local inquiry in respect of the Assembly electoral region or regions.

Paragraph 4(6)

586. The person appointed to hold the local inquiry has the powers to summon witnesses that are set out in sub-section 250(2) of the Local Government Act 1972.
587. The person holding the inquiry may issue a summons requiring someone to attend the inquiry at a particular time and place, and to give evidence or produce documents of a specified nature. The documents must be ones which are in his custody or control, and which relate to any matter which is in issue at the inquiry.
588. The person holding the inquiry can take evidence on oath, and may administer the oath.
589. Witnesses who have been summoned to attend must have their expenses paid.
590. Sub-section 250(3) of the Local Government Act 1972 also applies to inquiries held under this paragraph, and this creates offences about deliberately disobeying summonses, and deliberately altering, suppressing, concealing, or destroying evidence.
591. The offences are summary only. The maximum fine for the offences is level 3 on the standard scale, or imprisonment for up to six months, or both.

Paragraph 5 – Committee’s Report

592. This paragraph requires the Committee’s report to contain the recommendations which they propose should be included in the Electoral Commission’s report under paragraph 8 of this Schedule.

Paragraph 6 – Consideration of the Committee’s Report by the Commission

General

593. Under section 3A(3) of the Parliamentary Constituencies Act 1986, when the Electoral Commission receives the recommendations of the Boundary Committee in relation to *parliamentary* constituencies, the Commission may :
- a) accept all the Committee’s recommendations and include them in its report to the Secretary of State;
 - b) agree changes to the recommendations with the Committee, and then include the changed recommendations in its report; or
 - c) reject the recommendations
594. If it rejects the recommendations, it must either:
- a) require the Boundary Committee to reconsider them, with a view to the Committee submitting different recommendations to the Commission; or
 - b) require the Committee to carry out a fresh review of the whole or part of the area it had originally reviewed; or

- c) only in a case where the purpose of the Boundary Committee's review was to enable the Electoral Commission to submit a report under section 3(3) of the Parliamentary Constituencies Act, take no further action.

595. A report under section 3 (3) of the Parliamentary Constituencies Act 1986 is the one which the Electoral Commission has power to submit to the Secretary of State in relation to a particular area of the United Kingdom, making recommendations about the division of that area into parliamentary constituencies, in order to ensure that rules set out in Schedule 2 to the Parliamentary Constituencies Act are complied with.

Paragraph 6(1)

596. **Paragraph 6(1)** says that the Electoral Commission has the same powers (with any necessary modifications) in relation to recommendations by the Boundary Committee about Assembly electoral regions, as it has in relation to recommendations about parliamentary constituencies (i.e., those set out in section 3A(3) of the Parliamentary Constituencies Act 1986 and explained above).

Paragraphs 6(2) to (4)

597. These paragraphs say that if the Electoral Commission is minded to use its powers in section 3A (3) (b) and (c) of the Parliamentary Constituencies Act 1986 (these are the powers of acceptance with agreed changes, or rejection), in relation to recommendations by the Boundary Committee about Assembly electoral regions, then it must have regard to any views expressed in response to the Committee's newspaper notice.

598. If the Commission is minded to use those powers in relation to only part of an electoral region, then the views to which it must have regard are those which relate to that part.

599. It must also have regard to the findings of any local inquiry which was held.

600. If the Commission is minded to use its powers in relation to only part of an electoral region, then the findings of any local inquiry to which it must have regard are those which relate to that part.

Paragraph 7 – Directions by Commission to the Committee

601. This applies section 3A (4) of the Parliamentary Constituencies Act 1986 with a modification.

602. When the Boundary Committee is carrying out its duties under the Parliamentary Constituencies Act 1986, it must comply with any directions which the Electoral Commission gives to it.

603. The effect of the modification is that the Boundary Committee must only follow them if it can do so and still ensure compliance with the rules in paragraph 9 of this Schedule (i.e., the rules which must be followed in relation to the delineation of Assembly electoral regions, and the allocation of regional seats to those regions).

Paragraph 8 – Commission's Report

604. This paragraph deals with what happens if the Electoral Commission submits to the Secretary of State a report under section 3(1) of the Parliamentary Constituencies Act 1986 which recommends alterations in parliamentary constituencies in Wales, or a report under section 3(3) of that Act which relates to any constituency in Wales.

Paragraph 8(1)

605. The report under section 3 (3) of the Parliamentary Constituencies Act 1986 is one which says what constituencies the Electoral Commission think an area should be

divided into, in order to comply with rules that are set out in paragraphs 1 to 6 of Schedule 2 to the Parliamentary Constituencies Act 1986.

Paragraph 9 - Rules

General

606. The rules in paragraph 9 apply to the Boundary Committee's consideration of the Assembly electoral region issue and the Electoral Commission's report under section 3 of the Parliamentary Constituencies Act 1986.

Paragraph 9(1)

The rules are as follows:

607. The whole of an Assembly constituency must be contained in the same electoral region. It must not straddle two or more regions.
608. The electoral regions must contain a similar number of electors, so far as is reasonably practicable. There may be special geographical factors which mean that this is not reasonably practicable, and these can be taken into account.
609. The number of regional seats must be half the number of Assembly constituencies. For example, if there are 40 constituencies, there must be 20 regional seats.
610. However, if the number of constituencies can't be divided exactly by 2 (e.g. 39), one is added to the number of constituency seats, and then that number is divided by 2.
611. For example, if there were 39 constituencies, "1" would be added to 39, to give 40, and 40 would then be divided by 2 - so the number of regional seats would be 20.
612. The number of seats in each electoral region will be the total number of regional seats in the Assembly, divided by 5. Therefore, if the total number of regional seats is 20, the number of regional seats in Assembly electoral region "A" will be 4.

Paragraph 9(2)

613. However, if the total number of regional seats cannot be divided exactly by 5 (for example, 19), the next highest number which can be divided exactly by 5 is identified (for example, if the total number of regional seats was 19, that next highest number would be 15.)
614. This is then subtracted from the total number of regional seats (in the above example, 15 would be subtracted from 19, leaving 4).

Paragraph 9(3)

615. The result (4, in the above example) is the number of residual seats.

Paragraph 9(4)

616. Only one residual seat can be allocated to each electoral region.

Paragraph 9(5)

617. The next highest number below the total number of regional seats which can be divided exactly by 5 is then taken again. In the above example of 19 regional seats, it was 15. This is then divided by 5. In this example, the result would be 3.
618. For each electoral region, that number is then added to the number of Assembly constituencies in the region. The result is then divided into the number of electors in that region.

Paragraph 9(6)

619. Taking the above example again, if the number of electors in electoral region A is 130,000, and the number of constituencies in the region is 10, 130,000 is divided by 13 (10 + 3), giving a result of 10,000.
620. The results which this calculation produces for each region are then compared. The residual seats are then allocated. It is desirable that the residual seats are allocated to the regions in respect of which this calculation produced the highest results, and this should be taken into account when the residual seats are allocated.
621. If an electoral region is not allocated a residual seat, the number of regional seats it has will just be one fifth of the next highest figure to the total number of regional seats which can be divided exactly by 5. In the example of 19 regional seats, the next highest number would 15, which when divided by 5 gives 3 regional seats.

Paragraph 10 – Orders in Council giving effect to Commission reports

Paragraph 10(1)

622. Recommendations of the Electoral Commission are put into effect by an Order in Council, made under the Parliamentary Constituencies Act 1986.
623. Where parts of the Order relate to parliamentary constituencies, and parts relate to Assembly regions, those parts can come into force on different dates.

Paragraph 10(2)

624. However, where an Order has come into force altering Assembly electoral regions, any constituency by-elections, or the filling of vacancies in regional seats will take place on the basis of the old electoral regions. Voters will only vote on the basis of the new electoral regions at the next general election.

Paragraph 11 – Interpretation: the regional electorate

Paragraph 11(1) to 11(3)

625. It is necessary for the Electoral Commission and the Boundary Committee to identify the regional electorate figure for each region, when they are considering whether there needs to be any alteration to the Assembly electoral regions to ensure the rules in paragraph 9 of this Schedule are still complied with.
626. This paragraph defines what the Commission and the Committee should take as the regional electorate figure.
627. For each Assembly electoral region, it is the total number of persons who are on a register of local government electors at addresses which fall within that Assembly electoral region, on a specific date.
628. The specific date (“the enumeration date” referred to in paragraph 11 (2)) is the date on which the notice appeared in the London Gazette, saying that the Electoral Commission intends to issue a report into parliamentary constituencies under the Parliamentary Constituencies Act 1986. The Electoral Commission has a duty to publish the notice under section 5 (1) of that Act.

Paragraph 12: Interpretation: general

Paragraph 12

629. When this Schedule refers to “the Assembly electoral region issue”, it means the question the Boundary Committee are obliged to consider as to whether any

recommendations they are making about alterations to parliamentary constituencies require any alterations to Assembly electoral regions, or to the allocation of Assembly regional seats.

630. There is a clarification of the meaning which should be given to the phrase “recommendation” in this Schedule. It can mean both a recommendation that an alteration is made, and a recommendation that no alteration is made, unless it is clear from the context in which it is used that it only means a recommendation that an alteration be made.
631. The effect of this clarification means that, for example, in paragraph 3 (2) (a) of this Schedule “recommendation” would include both a recommendation for a
change to an Assembly electoral region, *and* a recommendation for *no* change to an electoral region.
632. In contrast, when paragraph 3 (2) (b) refers to “a copy of the recommendations” being open to inspection, it is clear from the first part of that sub-paragraph that “recommendations” is only intended to refer to those recommendations which are for a *change* to an electoral region.

Schedule 2: Assembly Commission

633. **Schedule 2** makes further detailed provision about the National Assembly for Wales Commission (“the Assembly Commission”), which is established by Section 27. This Schedule covers the membership, property, staff, powers, duties, proceedings and status of the Assembly Commission.
634. The Schedule applies the principles of sustainable development, equality of opportunity and equal treatment of the English and Welsh languages to the exercise of the Assembly Commission’s functions. It also provides a power for the Assembly Commission to promote public awareness of the current or pending system of devolved government in Wales, and the system for the election of Assembly members.